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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,411	09/12/2003	Gary A. Snyder	SN1.P01	6660

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STRATTON BALLEW
213 S 12TH AVE
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EXAMINER

CHAWLA, JYOTI

ART UNIT	PAPER NUMBER
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1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/07/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/661,411

Applicant(s)

SNYDER, GARY A.

Examiner

Jyoti Chawla

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The Amendment filed December 15, 2006 have been entered. Claims 1-14 are pending and examined in the current application.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Shillington et al (US 3533810) as evidenced by the data about methy anthranilate by www.thegoodscentcompany.com.

The references and rejection are incorporated herein and as cited in the office action mailed September 20, 2006.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kare (US 2967128) in view of the combination of Weaver (US 3669684) and Michael (US 3427167).

The references and rejection are incorporated herein and as cited in the office action mailed September 20, 2006.

Response to Arguments

Applicant's arguments filed December 15, 2006 have been fully considered but they are not persuasive.

l) Regarding the 102(b) rejection as anticipated by Shillington:

i) Applicant's argument that "there is nothing in Shillington that states the use of methyl anthranilate was intended to change the taste of the fruit" (Remarks, Page 2) is not persuasive.

The applicant states in the arguments that Shillington applies methyl anthranilate to the product as instantly claimed. Applicant also agrees that the addition of methyl anthranilate, as taught by Shillington combats microorganisms, minimizes oxidative deterioration and improves the appearance and aroma of the fruit. Applicant also agrees that Shillington teaches control of unfavorable odors in food and *enhances the odor* of the treated product. The applicant argues that the reference does not teach that methyl anthranilate changes the taste of the fruit. It is noted that Shillington reference teaches that methyl anthranilate provides aromatic freshness and enhances aroma of the treated product (Columns 2 and 3). It is also noted that methyl anthranilate and dimethyl anthranilate (methyl anthranilate compounds) (references U and V of record) impart a grape odor and flavor to compositions, such as, foods, beverages and perfumes etc (The good Scent company reference). Thus methyl anthranilate in the composition taught by Shillington will provide grape like flavor and odor to the product, as grape flavor and aroma are known properties of the compound known as methyl anthranilate. Therefore, the reference does teach the invention as claimed.

Furthermore, applicant's arguments pertain to the intended use of methyl anthranilate. In response to applicant's argument that "there is nothing in Shillington that states the use of methyl anthranilate was intended to change the taste of the fruit" (Remarks, Page 2), a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably

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distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

ii) The applicant argues that the evidentiary reference describing the properties of methyl anthranilate does not provide support to the inherency argument (Remarks, pages 2-3). However the applicant also states that "Since Shillington is silent ...the Examiner looks to a recent internet listing of the physical properties of methyl anthranilate, which notes the grape flavor as a characteristic of that material. An expansion of Shillington to include the process identified in Applicant's base claim 1 may not be accomplished simply with an inherency argument, *citing known properties of methyl anthranilate. These properties were well known at the time of Shillington, and Shillington failed to discuss them.*"

Thus the applicant agrees that

- a) the grape flavoring properties are inherent to methyl anthranilate
- b) if the properties of methyl anthranilate were known at the time of the reference, then the properties were also known at the time of the invention.

Thus it was known at the time of the invention that grape flavoring of the product is a property of methyl anthranilate compound, and the Shillington reference teaches the addition of methyl anthranilate to the coating composition to be applied to the product. Therefore the reference inherently teaches that the product with the methyl anthranilate coating would have grape flavor as it is an inherent property of methyl anthranilate.

iii) The applicant argues that "Shillington fails to include an effective disclosure of the Applicant's process, as claimed. More specifically, the "Dip" process identified in Shillington was a momentary "several second" dip in a relatively weak, 0.05% to 0.10% by weight, solution of methyl anthranilate. Such a dip will not allow for an effective absorption of the methyl anthranilate past the exocarp "skin" of pome fruit. Shillington's use of a "preserving" prophylactic solution, to impart a small "aromatic freshness," which is reportedly attributable to the methyl anthranilate as a residual effect, is not a flavoring per se" (Remarks, page 3).

Further, in response the applicant is reminded that the time of the dip and the concentration of methyl anthranilate in the dipping composition have not been instantly claimed. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., duration of the dip and the concentration of methyl anthranilate in the dipping composition) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

iv) Applicant's arguments that the office employed impermissible hindsight in asserting that Shillington teaches the claimed invention (Remarks, pages 3-4). In response to applicant's argument that the examiner's conclusion of anticipation is based upon improper hindsight reasoning, it is noted that hindsight is related to a reconstruction of the invention and since the rejection was not an obviousness rejection (i.e. a reconstruction or a 103 rejection), but rather an anticipation rejection (i.e. 102 rejection) it would be impossible to apply hindsight reasoning. Thus applicant's argument is not convincing.

v) The applicant's argument that the Shillington reference does not have the "additional claimed element of *absorption of a flavor* into the interior of the fruit" is not persuasive because "*adsorption*" and not *absorption* of the flavoring mixture has been instantly claimed. It is further noted that the features upon which applicant relies (i.e., absorption of grape flavor from an admixture containing methyl anthranilate) is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Furthermore, regarding the "absorption of the of a flavor into the interior of the fruit" as stated in the argument is not an active method step as the absorption is done by the fruit at its own characteristic pace and without a listing of active method steps that are employed to enhance the absorption by the fruit, the mere statement of absorption does

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not provide a patentable distinction to the claims absent any clear and convincing evidence and/or arguments to the contrary. Furthermore, the method steps of dipping and coating the fruit, as recited, would be expected to yield absorption as well as adsorption of the flavor compound by the fruit or the product the flavor compound is applied to.

II) Regarding the obviousness rejection (i.e., 103 rejections) over Kare in view of a combination of Weaver and Michael, applicant's arguments have been fully considered and have not been found persuasive.

i) Applicant's arguments are addressed to each of the references individually (remarks pages 4-8). In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In the present instance Kare is relied upon to teach that methyl anthranilate compound was known for imparting artificial food flavors used for cooking and baking can also be used as a bird repellent and applied to foods as it provides the fruit with the taste and aroma that the birds dislike.

Weaver teaches a process of enhancing the flavor of foods (e.g., fruit, vegetable, nuts and eggs), where the foods in their natural state may be given additional flavor of the same or another food, such that a single natural food (e.g., fruit) itself would contain either enhanced or blended flavors (Column 1, line 25-40 and 55-68; Column 2, lines 1-3). Weaver teaches subjecting the food to a desired flavor-imparting ingredient, such as, the flavor essence or concentrate (Column 2, line 60 to Column 3, line 10). Weaver teaches exposing the whole natural foods, such as, uncut and unpeeled fruits, vegetables and eggs etc., to desired flavors (Columns 3-6). Weaver also teaches imparting flavors to pears and apples (Column 5 and 6, examples 6, 7, 12 and 13) as

recited by the applicant. The reference further teaches grape flavor among the desired flavors that can be imparted to apples (Column 5, lines 35-45). Weaver, however, does not teach addition of methyl anthranilate to the flavoring composition and also does not teach dipping the fruits in the flavoring composition.

Michael teaches that methyl anthranilate has been used in the food industry to make grape flavored drinks and enhance the grape flavor of food products like jams and jellies etc. (Columns 1 and 2).

Methyl anthranilate and dimethyl anthranilate both compounds provide characteristic grape flavor and aroma as evidenced by www.thegoodscentcompany.com. Methyl anthranilate has been used to flavor crops and food and other articles (by spraying or dipping) to render the treated articles unattractive to birds while still maintaining desirability for other animals and humans (Kare). Flavoring compounds were known and were employed to impart different flavors or to enhance the natural flavors of harvested whole fruits and vegetables (apples and pears) in the art (Weaver). Methyl anthranilate was known in the art for its characteristic grape flavor and aroma that it imparts to the composition it is added (Michael). Grape flavor is one of the popular flavors for consumers, especially kids. Therefore it would have been obvious to one with ordinary skill in the art at the time of the invention that application of a composition containing methyl anthranilate to apples, pears among other fruits or vegetables will add to the natural flavor of these fruits/vegetables and also make the natural foods more attractive and desirable for consumers. One would have been further motivated to do so in order to encourage healthier eating habits by giving the regular fruits and vegetables a flavor twist to make eating fruits and vegetables more interesting to children. Thus the combination of references teach the invention as claimed absent any clear and convincing evidence and/or arguments to the contrary.

ii) Applicant's argue that the product "soaked in the composition" as taught by Kare reference does not teach soaking of the fruit as claimed. In response the applicant is referred to the claim language where the claim states "applying the flavoring admixture

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to the exocarp of the of a pome fruit" thus soaking it with the mixture containing grape flavoring methyl anthranilate is a method of application.

iii) In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

iv) In response to applicant's argument that Michael reference only teaches that methyl anthranilate enhances the flavor of grapes and not of other fruits, the applicant is referred to the office action dated September 20, 2006 and the response above where it has been discussed that methyl anthranilate has a property of imparting grape flavor to the product it is added.

v) In response to applicant's argument that references Kare is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Kare reference teaches application of a compound (methyl anthranilate) on the fruit and vegetable has been known and since the compound has the property of imparting grape flavor to the product it is added, therefore it would be obvious to one of ordinary skill in the art at the time of the invention that the fruit and vegetable will acquire some grape flavor as recited.

Thus applicant's arguments have been considered and have not been found persuasive and the rejections are maintained for the reasons of record.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Chawla whose telephone number is (571) 272-8212. The examiner can normally be reached on 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jyoti Chawla
Examiner
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KEITH HENDRICKS
PRIMARY EXAMINER